

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 659 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NANALAL HARIDAS

Versus

BHANUSHANKER K PANDYA

Appearance:

MR SURESH M SHAH for Petitioner
MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/10/2000

C.A.V. JUDGEMENT

#. This is tenant's revision under sec.29(2) of the
Bombay Rent Act.

#. The brief facts giving rise to this revision are as
under :

The disputed accommodation consisting of a room, oasri as well as terrace on the first floor was let out by the plaintiff to the defendant on monthly rent of Rs.20=00. The defendant was irregular in payment of rent. Rs.680=00 fell due from him towards arrears of rent for thirty four months from March 3, 1978 to January 2, 1981. He however, paid Rs.150=00 on July 8, 1979 through one Popatlal and Rs.150=00 to his wife on January 20, 1980 and thereafter, Rs.380=00 remained due from the defendant. He was thus, in arrears of rent exceeding six months, hence notice of demand was served on January 20, 1981. The revisionist did not comply with the notice, hence suit for eviction and recovery of arrears of rent was filed.

#. The defendant, in his written statement, pleaded that the rent is not payable monthly - rather, it was agreed that the rent would accumulate and the plaintiff would collect after more than a year, and as such, the defendant used to pay rent after it was due for more than one year. He, further pleaded that the rent upto February 2, 1980 was paid to the wife of the plaintiff but, no receipt was given. He denied service of notice and also challenged validity of notice. According to him, the rent was excessive and standard rent could not be more than Rs.2=00 per month.

#. The trial Court found that, the defendant/revisionist was in arrears of rent for more than six months from March 3, 1978 but, he was ready and willing to pay the rent. Service of notice was accepted by the trial Court and the notice was found to be valid. However, in view of readiness and willingness of the defendant/revisionist to pay the rent, the suit for eviction was dismissed.

#. An appeal was preferred. The lower Appellate Court allowed the appeal of the landlord and granted decree for possession on the ground of tenant being in arrears of rent for more than six months. Standard rent, which was fixed by the trial Court at Rs.17=00 per month was enhanced by the Appellate Court to Rs.20=00 per month. It is, therefore, this revision.

#. None appeared from the side of the respondent/landlord. As such, Shri MS Shah representing the revisionist was heard and the judgments of the two courts were examined.

#. Shri Shah contended that, the judgment of the trial Court is in accordance with law whereas, the judgment of the Appellate Court is contrary to law, hence

interference in revision is justified. According to him, the case is not covered by sec.12(3)(a) of the Bombay Rent Act. He further urged that, since the entire arrears of rent were deposited in the courts below, the revisionist was entitled to protection of sec.12(3)(b) of the Act, hence the view taken by the trial Court is in accordance with law, whereas the view taken by the lower Appellate Court is erroneous.

#. The first point for consideration in the revision is, what is the standard rent of the suit premises ? Agreed rent, according to the landlord is Rs.20=00 per month. However, the trial Court fixed the standard rent at Rs.17=00 per month, rejecting the defendant's plea that the standard rent can not exceed Rs.2=00 per month. The lower Appellate Court has enhanced the standard rent at Rs.20=00 per month, which is the agreed rent. In my opinion, the nominal or marginal difference of Rs.3=00 per month towards fixation of standard rent by the Appellate Court hardly creates a ground for any interference in revision. Cogent reasons have been given by the lower Appellate Court in fixing the standard rent at Rs.20=00 per month. As such, this point is finally concluded that the standard rent is Rs.20=00 per month.

#. The lower Appellate Court has held that the standard rent of Rs.20=00 per month includes all taxes but, it does not include water charges or electricity charges. For this also, cogent reasons have been given by the lower Appellate Court. Electricity charges can not be included in the agreed amount of rent. There was no agreement to the contrary that electricity charges will form part of rent. Consequently, electricity charges were rightly excluded from the monthly rent.

##. So far as water charges are concerned, the lower Appellate Court has rightly drawn distinction between water tax and water charges. Water tax is levied on the property, whereas water charges are payable by the occupier of the property for using water in the premises. It has come in evidence that, water charges were never agreed to be paid by the defendant to the plaintiff/landlord, nor is there any evidence that the plaintiff ever collected water charges from the defendant. Likewise, there is no evidence that the water charges were paid by the plaintiff to the Municipality. On the other hand, the evidence is that, water charges were paid by the defendant/tenant annually to the Municipality. In view of this, it will be deemed that there was agreement between the landlord and the tenant that, the water charges for consumption of water will be

paid by the tenant directly to the Municipality. There can be no agreement, express or implied, nor is there any evidence to this effect that, the tenant was paying water charges directly to the Municipality for and on behalf of the landlord. Thus, the lower Appellate Court did not commit any illegality in holding that, the water charges were not part of the rent, and if the same were paid annually by the tenant directly to the Municipality, it can not be said that it was liability of the tenant to pay water charges to the Municipality for and on behalf of the landlord. Shri Shah, however, contended that, it is immaterial whether water charges were paid directly to the plaintiff or directly to the Municipality. However, this plea can not be accepted for coming to the conclusion that water charges form part of rent, which were to be paid by the tenant to the landlord. Thus, the finding of the lower Appellate Court that, the defendant has to pay the water charges for consumption of water directly to the Municipality and he has not to pay any amount of water charge to the plaintiff per month or per year is not contrary to law or evidence on record. The lower Appellate Court has rightly held that Rs.20=00 per month is the standard rent and, all municipal taxes are to be paid by the landlord and water charges, electricity charges are to be paid directly by the tenant.

##. The next point for consideration is, whether the revisionist was in arrears of rent for more than six months. According to the plaintiff, the defendant did not pay thirty four months rent from March 3, 1978 to January 2, 1981 at the rate of Rs.20=00 per month, amounting to Rs.680=00. The plaintiff accepted that Rs.150=00 were paid by the defendant on July 8, 1979 through one Popatlal and Rs.150=00 were paid on January 20, 1980 to the wife of the plaintiff. These two payments are not evidenced by any receipt. Still, the landlord accepted these payments, which shows his bonafide. In this way, Rs.380=00 remained due from the defendant. The case of the defendant was that, he had paid the entire rent upto February 2, 1980 to the wife of the plaintiff. On this point, the lower Appellate Court found that, the defendant failed to establish these payments. The finding was rendered on the basis of evidence on record and the circumstances of the case. No rent receipt was filed by the defendant to prove the alleged payment of rent upto February 2, 1980. A significant circumstance was against the defendant that, though he received notice of demand, yet he did not give any reply to the same, alleging at the earliest opportunity that he had paid rent upto February 2, 1980. The denial of the tenant that he did not receive notice

stood falsified when he admitted in the witness box his signature over the acknowledgement receipt(Ex.47). As against this, the plaintiff produced last receipt(Ex.40) dated February 13, 1978 indicating that last payment of Rs.120=00 was made by the defendant. On such evidence, the lower Appellate Court was justified in concluding that the defendant was in arrears of rent since March 3, 1978. After adjusting payment of Rs.300=00, which represents fifteen months rent, the defendant was still in arrears of rent exceeding six months, which were not paid by him within a month of receipt of notice of demand.

##. The question for consideration now is, whether the case falls under sec.12(3)(a) or sec.12(3)(b) of the Bombay Rent Act ? Obviously, it is established that the tenant was in arrears of rent for more than six months. It is further established that, he did not pay the arrears within a month of service of notice of demand. It was alleged by the plaintiff that the tenancy was monthly. The nature of tenancy can not be changed in view of the agreement setup by the tenant that the landlord used to accept rent when it used to accumulate for a period exceeding one year. The mode of payment of rent will not change the nature of tenancy. Even, in monthly tenancy the landlord may agree to accept rent exceeding one month and upto one year also. If, that is the agreement or practise, it will not change the nature of tenancy from monthly to annual tenancy. Annual tenancy can be created only by a registered instrument and not by a rent note or by oral agreement. There is no registered instrument creating annual tenancy. It has already been held by the lower Appellate Court, which has been confirmed by me in the foregoing portion of this judgment that, the water charges are not included in the rent and water charges were paid directly by the tenant to the Municipality and water charges were never collected by the landlord for payment to the Municipality. As such, even if water charges were paid by the tenant annually to the Municipality, it will not change the nature of tenancy. Thus, the tenancy remains monthly tenancy.

##. It is also clear that no dispute of standard rent was raised by the tenant at the earliest opportunity. No such dispute was raised by him before service of notice of demand. Likewise, no such dispute of standard rent was raised within a month of service of notice of demand. The dispute was raised in the written statement, which does not amount to raising of dispute of standard rent within the meaning of sec.12(3)(a) of the Act. No

application for fixation of standard rent was raised by the tenant under sec.11(3) of the Bombay Rent Act. Consequently, it was a case where there was no dispute or bonafide dispute of standard rent. On these findings, the lower Appellate Court was justified in concluding that the case is covered by sec.12(3)(a) of the Act. The contention to the contrary of Shri Shah that the case is not covered by sec.12(3)(a), under these circumstances, can not be accepted.

##. If the case is covered by sec.12(3)(a) of the Act, the landlord was entitled to decree for possession, and in granting decree for possession, the lower Appellate Court committed no illegality. In the result, I do not find any merit in this revision, which is hereby dismissed with no order as to costs.

DATED : 19/10/2000. [D.C. SRIVASTAVA, J.]

/sakkaf